IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 12224 of 2004(E)

PETITIONER:

T.V.R.FUND, KARAMANA,
THIRUVANANTHAPURAM, REPRESENTED BY THE
OFFICIAL RECEIVER, DISTRICT COURT,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.N.ACHUTHA KURUP
SRI.K.HARILAL

RESPONDENTS:
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1. **MANIKANTAN S/O. KANAKA SUBHAPATHI,**
   RESIDING AT T.C.40/86,
   KURIATHY, CHALAI VILLAGE, MANACAUD,
   THIRUVANANTHAPURAM.

2. **PRABHAKARAN NAIR, THE ASSIGNEE**
   DECREE HOLDER, KUMARAMANGALAM, KACHANI,
   THIRUVANANTHAPURAM.

3. **BABU K.MATHEW, T.C.12/187, PALATHINGAL,**
   THEKKUMMOODU, VANCHIYOOR, THIRUVANANTHAPURAM.

BY ADV. SRI.S.GOPAKUMARAN NAIR, SC, CALICUT UTY
SRI.M.RAJASEKHARAN NAYAR for R2
SRI.JOHN K JOSEPH
SMT.RAJANI K N
SMT.NITHYA K.
SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.12224/2004 E

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE REPORT FILED BY THE OFFICIAL RECEIVER IN E.A.NO.263/02 IN O.S.573/1981 BEFORE PRINCIPAL SUB COURT, THIRUVANANTHAPURAM DTD. 17/09/02.**

EXT.P2: **COPY OF THE ORDER IN Eas.137/02 AND 138/02 IN O.S.573/81 DTD. 18/10/02 OF THE PRINCIPAL SUB JUDGE, THIRUVANANTHAPURAM.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 12224 OF 2004

Dated this the 18th day of June, 2007

JUDGMENT

The Official Receiver of the Thiruvananthapuram District Court who was appointed by the Insolvency Court, Thiruvananthapuram for administering the assets of a partnership firm by name TVR Funds is the petitioner in this Writ Petition under article 227 of the Constitution. The order impugned is Ext.P2 passed by the Principal Sub Court, Thiruvananthapuram, a common order in EA No.137 of 2002 and EA No.138 of 2002 filed by the 1st respondent. The prayer in EA No.137 of 2002 was to stay all further proceedings pursuant to a notice dt.02.09.02 affixed by the Official Receiver on the decree schedule property and prayer in EA No.138 of 2002 is that the Official Receiver be directed to obey the order in EA N.263/02 and if he fails to obey the orders, pass orders attaching the receiver's property. There was an earlier order by the Sub Court in EA No.263 of 2002 which was to the following effect. "The Official Receiver is permitted to let out the shop room to the petitioner(1st respondent) provided the petitioner agrees with the rent fixed by the Official Receiver. The Official Receiver will take necessary records for handing over the schedule premises to the petitioner and she will maintain proper accounts. The possession of the petitioner will

be subject to the result of the EP." Pursuant to that order the Receiver published notice inviting tenders from persons who are desirous of taking the shop room on rent quoting the monthly rent which is offered. 14 individuals including the 1st respondent submitted sealed tenders. The tenders were opened and it was seen that the 1st respondent quoted only Rs.500/- while the highest offer was made by one M.S.Ajithkumar, which was for Rs.3,200/-. As against the offer of Rs.500, there was offers of Rs.2,501 from one Ayyappa Pillai, Rs.2,000/- from R.Subrahmanian, Rs.2,000/- from one S.P.Ajithkumar and Rs.2,000/- from Devarajan. The tenders received by the Receiver were opened by her in the presence of most of the tenderers including the 1st respondent and noticing that the highest tender was Rs.3,200/- , what the Receiver did was to fix the rent of the shop room as Rs.3,205/-. The 1st respondent was not ready either to accept the rent fixed by the Receiver. He was not prepared to offer anything more than what was already offered by him i.e. Rs.500/- per mensum. The Receiver under the above circumstances decided to let out the shop room to Sri.Ajithkumar M.S., who offered Rs.3,200/- and filed Ext.P1 report seeking ratification of the Court. Under the impugned order Ext.P2, the learned Subordinate Judge has taken the view that the Receiver has to hand over the possession of the schedule premises to the 1st

respondent and also held that the Receiver was not justified in handing over the schedule property to Sri.Ajithkumar and accordingly declined to ratify the Receiver's act in handing over the building to Sri.Ajithkumar. Rejecting Ext.P1 report submitted by the Receiver, the court below accepted the offer made on behalf of the 1st respondent at the Bar that he is ready to pay Rs.1,000/- by way of monthly rent and directed the Receiver under the impugned order to hand over the building to the 1st respondent on monthly payment of Rs.1,000/-.

2. Smt.Bindu Sreekumar, learned counsel for the petitioner and the learned counsel for the 1st respondent addressed me extensively. Smt.Bindu Sreekumar would submit that the impugned order has been made in dereliction of the earlier order in EA 263/02 which has attained finality. Under EA No.263 of 2002 the Receiver was permitted to let out the shop room to the 1st respondent on condition that the 1st respondent shall pay the rent which is fixed by the Receiver. In the instant case the Receiver fixed rent not in any arbitrary manner. Publication of notice inviting offers showing the agreeable rent by the Receiver was an earnest endeavour to realise the best rent in the market. The building is situated in the heart of the Chalai market in Thiruvanathapuram city and going by the prevailing rent rates the building should fetch at least Rs.3,500/-. As Receiver is appointed by the Insolvency Court for

administering the estate for the benefit of all the creditors of the firm in question, it is petitioner's duty to ensure that the estate generates maximum profit so that the creditors at whose instance the Insolvency Court appointed her as Receiver will be benefited. Though the highest offer was made by Sri.Ajithkumar, the petitioner was willing to let out the building to the 1st respondent who offered only Rs.500/- provided the 1st respondent pays at least Rs.5 more than the higher offer. Smt.Bindu Sreekumar, learned counsel for the respondent would place before me copy of the common order in CRP Nos.273 and 178 of 2000 pursuant to which only the Receiver was able to take possession of the building. She also placed before me the full text of the order in EA No.263 of 2002.

3. Even though all the submissions of Smt.Bindu Sreekumar were resisted by the learned counsel for the 1st respondent, who submitted that the 1st respondent was a statutory tenant already in possession of the building, at the time when he was dispossessed by the Receiver is entitled to be put back in possession of the building on paying the agreed rent which is only Rs.500/-. The Receiver has to be directed to hand over possession of the building to the 1st respondent from whom the Receiver had taken possession on the original rent of Rs.500/- and thereafter the Receiver can move the appropriate court for fixation of fair

rent. Once fair rent is fixed, the 1st respondent will be prepared to pay fair rent.

4. Having regard to the rival submissions made at the Bar and the materials which have been placed before me by the learned counsel for the petitioner and also those produced along with the Writ Petition, I am of the view that the learned Subordinate Judge was bound by her own order in EA No.263 of 2002 which was issued taking note of the order in CRPs. It is true that the 1st respondent is entitled to get back possession of the building. For such entitlement, the 1st respondent has liability to pay the rent fixed by the Receiver. Here the Receiver has fixed Rs.3,205/- as the rent. The 1st respondent is not ready to pay that rent. If the 1st respondent is prepared to pay the rent fixed by the Receiver, he will become entitled to be put in possession of the building. The fixation of Rs.1,000/-as the rent payable by the 1st respondent, by the court below, was not proper. Pursuant to an order passed by me on 14.06.07, it was reported by the counsel for the petitioner that on 16.09.02 when the tenders were opened by the Receiver and Sri.Ajithkumar M.S, the highest offerer was also physically present. This means that his offer was a genuine offer. Even otherwise I do not find any reason to disbelieve what has been reported by the Receiver in Ext.P1. The building, it should be remembered is in Chalai Bazar and

many of the offers received were around Rs.2,000/- per mensum as against the sum of Rs.500/- offered by the 1st respondent.

5. The result of the above discussion is that the Writ Petition will stand allowed. Ext.P2 is set aside. It is held that the 1st respondent will become entitled for the building only if he is willing to pay a sum of Rs.3,201/- as rent. (i.e., Rs.1/- higher than the highest offer received by the Receiver). The court below is directed to facilitate handing over of the building to the 1st respondent subject to his right to have a fair rent in accordance with law provided he expresses his willingness to pay Rs.3,201/- as monthly rent in writing before the court below within 30 days from today. If the court below finds any technical difficulty in the matter of issuing directions to the Receiver, it is open to the 1st respondent to seek appropriate remedies from the Insolvency Court in the light of the findings contained herein.

The Writ Petition is allowed as above. No costs.

PIUS C. KURIAKOSE, JUDGE

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